IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 322 of 1984

With

CROSS OBJECTION No. 42 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMA IND. CHEMICALS - Appellant(s)
Versus
BAI ZUBEDA WD/O MOHMED S AHMED & 7 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant : 1
NOTICE SERVED for Respondent: 1 - 7
None for Respondent : 8

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/06/2007

ORAL JUDGMENT

1. Shri Rajni H. Mehta, learned counsel for the appellant; none for respondents no. 1 to 7 despite service of notice; none for the respondent no.8 though name of Shri B.R. Shah is shown.

2. Being aggrieved by the judgment and award dated 14.3.83 passed by M.A.C. Tribunal [Main], Bharuch in M.A.C. Petition No. 145 of 1981 and 217 of 1981, the appellant-owner is before this Court with a submission that the Tribunal erred in awarding a sum of Rs. 86,500/- towards the claim made by the claimants.

3. It is to be noted that the claimants, after service of notice, had taken out Cross Objections, but at the time of hearing, they have chosen not to remain present. In view of the said absence, Cross Objections filed by the claimants are hereby rejected.

4. Learned counsel for the appellant, during the course of the arguments submitted that the Insurance Company should have been held liable for the entire amount of Rs. 86,500/- and its liability could not be limited to the extent of Rs. 50,000/- only. In the alternative, it is submitted that if the Tribunal was holding that the Insurance Company was

liable to the extent of Rs. 50,000/- with interest and cost, then too, the Tribunal was liable to hold liability of further amount of Rs. 5,000/- against the interest of the Insurance Company, the amount which was awarded in favour of the claimants towards the loss to the property.

5. As the liability, accident and death of the deceased are not in dispute, I am not required to refer the facts in detail.

6. From the judgment of the Tribunal, it would clearly appear that after considering the entire material available on the records, it had come to a conclusion that the claimants would be entitled to sum of Rs. 86,500/-. The Tribunal had found that dependency benefit could safely be assessed at Rs. 425/- per month, meaning thereby, Rs.5100/- per year. To this, the Tribunal, rightly in the opinion of this Court had applied multiplier of 15. After taking me through the evidence etc., learned counsel though wanted to submit that dependency benefit was assessed on the higher side, but in the opinion of this Court, looking to the evidence brought on the records, the Tribunal was justified in holding dependency benefit of Rs. 425/- per month. The Tribunal had rightly awarded a sum of Rs. 5,000/-

towards the expectation of life, enjoyment and loss of company. There is nothing on records to show or suggest that the property, which is a scooter did not suffer loss of Rs. 5,000/-. The Tribunal was justified in making award of Rs.86,500/-.

7. So far as the liability of the Insurance Company to the extent of Rs. 50,000/- is concerned, I must immediately hold that in view of the terms of the policy for liability under Section 95[2][i], liability should be restricted to the extent of Rs. 50,000/-. But the Tribunal did not appreciate the language employed in Section 95[2][ii] which provides that in case of loss to the property, liability of the Insurance Company would be to the extent of Rs. 5,000/-. This amount of Rs. 5,000/- obviously should be paid by the Insurance Company. In the opinion of this Court, the total liability of the Insurance Company would be Rs. 50,000/- and Rs. 5000/- with interest as awarded by the Tribunal and the proportionate cost. If the appellant has already paid the entire amount to the claimants, then, he would be entitled to recover back the sum of Rs. 5,000/- with 9% interest from the date of payment to the claimant till the date of recovery from the Insurance Company.

8. The appeal to the extent indicated above is allowed.

No costs.

[R.S. GARG, J.]

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